

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Diamond Construction
Company, Inc.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a hearing before Administrative Law Judge Barbara L. Neilson on June 15, 2007, at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Labor and Industry ("the Department"). There was no appearance by or on behalf of the Respondent, Diamond Construction Company, Inc., 12235 Grouse Street N.W., Coon Rapids, MN 55448. The OAH record closed at the conclusion of the hearing on June 15, 2007.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent, Diamond Construction Company, Inc., failed to properly complete a remodeling contract with a Roseville homeowner, in violation of Minn. Stat. § 326.91, subd. 1(4); failed to respond to the Department's requests for information, in violation of Minn. Stat. § 45.027, subd. 1a; and failed to maintain liability insurance, in violation of Minn. Stat. § 326.945, subd. 2, and 326.91, subd. 1(5). If so, the further issue is whether the Respondent's license should be subject to discipline and/or a civil penalty should be imposed pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91, subd. 1 (2004).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges ("Notice of Hearing") initiating this contested case proceeding was served on the Respondent, Diamond Construction Company, Inc., via first class mail on August 10, 2006, at the following address: Christine Lynn Kappelhoff, Diamond Construction Company, Inc., 12235 Grouse Street NW, Coon Rapids, MN 55448.^[1]

2. The Notice of Hearing set a prehearing conference for September 22, 2006, at 2:30 p.m.^[2] Counsel for the Department and Josh McCabe, President of Diamond

Construction Company, appeared at the prehearing conference, and a hearing date of January 10, 2006, was set. On September 22, 2006, the Administrative Law Judge served both parties with a written First Prehearing Order confirming the new hearing date.

3. The parties thereafter informed the Administrative Law Judge that they had agreed that the January 10, 2007, hearing should be continued and a status conference held in three to four months. By letter dated January 5, 2007, the Administrative Law Judge ordered an indefinite continuance of the hearing and scheduled a telephone status conference for April 17, 2007. The Administrative Law Judge directed Mr. McCabe and Ms. Kappelhoff to inform her prior to April 17 whether they each wished to participate in the call and provide her with a telephone number at which they may be reached for the conference call.

4. Neither Mr. McCabe or Ms. Kappelhoff, nor anyone else on behalf of Diamond Construction Company contacted the Administrative Law Judge prior to April 17, 2007, to provide telephone numbers. When the Administrative Law Judge attempted to join Diamond Construction to the conference call on April 17, 2007, using the number for Diamond Construction counsel for the Department informed her was contained in the Department's file, she received a recording that that number was not in service. Counsel for the Department informed the Administrative Law Judge during the call that the Department had sent Diamond Construction a proposed consent order but had not heard back from the Company.

5. On April 17, 2007, the Administrative Law Judge sent the parties a letter summarizing the above information and served the parties with a Second Prehearing Order setting the matter on for hearing on Friday, June 15, 2007, at 9:30 a.m. at the Office of Administrative Hearings. The Second Prehearing Order contained the following language:

Diamond Construction is reminded that, if it fails to appear at the hearing without good cause and without making an appropriate request for a continuance in advance of the hearing, it shall be deemed to be in default and the allegations or issues set forth in the Notice of and Order for Hearing may be deemed proved, its residential building contractor license may be revoked or suspended, and it may be censured and/or a civil penalty may be imposed against it without further proceedings.^[3]

6. No one appeared at the hearing on June 15, 2007, on behalf of the Respondent. The Respondent did not make any request prior to the June 15, 2007, hearing for a continuance or any other relief. Counsel for the Department informed the Administrative Law Judge that the Respondent had never signed and returned the proposed consent order it had been provided.

7. Because the Respondent failed to appear at the hearing in this matter, it is in default.

8. Pursuant to Minn. Rules part 1400.6000 (2005), the allegations contained in the Notice of Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Department of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (2006).

2. The Notice of Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000 (2005), the allegations contained in the Notice of Hearing are hereby taken as true.

4. By failing to properly complete a remodeling contract with a Roseville homeowner, failing to respond to the Department's requests for information, and failing to maintain liability insurance, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a, 326.91, subd. 1(4) and (5), and 326.945, subd. 2.

5. The Respondent is subject to discipline and/or a civil penalty pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91, subd. 1 (2006). The imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Labor and Industry impose discipline and/or an appropriate civil penalty against the Respondent, Diamond Construction Company, Inc.

Dated: June 22, 2007

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

^[1] Affidavit of Service by U.S. Mail of Jean-Anne Gates attached to Notice of Hearing.

^[2] Notice of Hearing, p. 1.

^[3] Emphasis in original.